

Hate crimes are destructive and divisive. A random act of violence resulting in injury or even death is a tragic event that devastates the lives of the victim and their family, but the intentional selection and beating or murder of an individual because of who they are terrorizes an entire community and sometimes the Nation. For example, it is easy to recognize the difference between check-kiting and a cross burning; or an arson of an office building versus the intentional torching of a church or synagogue. The church or synagogue burning has a profound impact on the congregation, the faith community, the greater community, and the Nation.

Mr. Speaker, some opponents of hate crimes legislation claim that such legislation is a solution in search of a problem. They claim that there is no epidemic of bias-motivated violence and thus no need to legislate. I wish to briefly address this claim.

VICTIMS AND PERPETRATORS

According to the Bureau of Justice Statistics, racially motivated hate crimes most frequently target blacks. Six in ten racially biased incidents target blacks, and 3 in 10 incidents targeted whites. Hispanics of all races were targeted in 6.7 percent of incidents and Asians in 3 percent. Younger offenders were responsible for most hate crimes and most of their victims were between 11 and 31. The age of victims of violent hate crimes drops dramatically after age 45. Thirty-one percent of violent offenders and 46 percent of property offenders were under age 18. Thirty-two percent of hate crimes occurred in a residence, 28 percent in an open space, 19 percent in a retail commercial establishment or public building, 12 percent at a school or college, and 3 percent at a church, synagogue, or temple.

EXAMPLES OF CRS HATE CRIME CASES

In Harris County—Houston—Texas, in a case that drew national attention, 16-year-old David Ray Ritcheson, a Mexican-American, was severely assaulted April 23, 2007, by two youths while attending a party in the Houston suburb of Spring, Texas. One of his teen-age attackers, a skinhead, yelled ethnic slurs and kicked a pipe up his rectum, severely damaging his internal organs and leaving him in the hospital for 3 months and 8 days—almost all of it in critical care. For the supposed crime of allegedly kissing a white girl, young David Ray's assailants punched him unconscious, kicked him in the head, sadistically inflicted 17 cigarette burns that still scar his body, poured bleach on his face and body, and then assaulted with a pipe taken from a patio umbrella. He was left lying unconscious and unattended in the back yard of a house for more than 8 hours. He has endured more than 30 operations to restore his appearance and regain the normal use of his bodily functions.

In Jasper, Texas, an African-American man, James Byrd, Jr., was brutally murdered by being kidnapped, beaten unconscious, spray painted in the face with black paint, tied to the back of a pick-up truck, pants dropped down to his ankles, dragged 2.5 miles over pavement through a rural Black community in Jasper County called Huff Creek, leaving his skin, blood, arms, head, genitalia, and other parts of his body strewn along the highway, his remains were dumped in front of a Black cemetery.

In Springfield, Missouri, an African-American male in the company of a white female was stabbed at local Denny's restaurant by a group of white males.

Near San Diego, California, elderly immigrant workers were attacked by white youths. The body of a Latino immigrant youth was also discovered in the same vicinity as the attacks on the workers.

An African-American employee of a construction company in Marquette, Kansas, reported that he had been racially harassed for several months by fellow employees through racist graffiti and name-calling.

A Jewish synagogue was vandalized by four Arab-American males in the Bronx, New York.

Every individual's life is valuable and sacred, and even one life lost is too many. There is ample evidence that violent, bias-motivated crimes are a widespread and serious problem in our Nation. But it is not the frequency or number of these crimes alone, that distinguish these acts of violence from other types of crime; it is the impact these crimes have on the victims, their families, their communities and, in some instances, the Nation.

Evidence indicates that bias-motivated crimes are underreported; however, statistics show that since 1991 over 100,000 hate crime offenses have been reported to the FBI, with 7,163 reported in 2005, the FBI's most recent reporting period. Crimes based on race-related bias were by far the most common, representing 54.7 percent of all offenses for 2005. Crimes based on religion represented 17.1 percent and ethnicity/national origin, 13.2 percent. Crimes based on sexual orientation constituted 14.2 percent of all bias-motivated crimes in 2005, with 1,017 reported for the year.

The National Coalition of Anti-Violence Programs (NCAVP), a non-profit organization that tracks bias incidents against gay, lesbian, bisexual and transgender people, reported 1,985 incidents for 2005 from only 13 jurisdictions, compared to the 12,417 agencies reporting to the FBI in 2005.

Additionally, the Hate Crimes Statistics Act makes the reporting of bias-motivated crimes by State and local jurisdictions voluntary, resulting in no participation by many jurisdictions each year. Hawaii, for instance, did not participate in reporting at all in 2005. Underreporting is also common. Wyoming, for instance, reported only 4 incidents for 2005. Six States reported 10 or fewer incidents in 2005. Some large cities have been egregiously deficient in reporting hate crimes. Jacksonville, Florida, for example, reported only 5 incidents in 2005.

Sadly, statistics only give a glimpse of the problem. It is widely recognized that violent crimes on the basis of sexual orientation often go unreported due to fear and stigmatization. A Department of Justice report released in October 2001 confirms that bias-motivated crimes are under-reported; that a disproportionately high percentage of both victims and perpetrators of these violent crimes are young people under 25 years of age; and that only 20 percent of reported hate crimes result in arrest.

A December 2001 report by the Southern Poverty Law Center, SPLC, a nonprofit organization that monitors hate groups and extremist activity in the United States, went so far as to say that the system for collecting hate crimes data in this Nation is "in shambles." SPLC estimates that the real number of hate crimes being committed in the United States each year is likely closer to 50,000, as opposed to the nearly 8,000 reported by the FBI.

Next, Mr. Speaker, let me address the specious claim that H.R. 1592 abridges free

speech. Opponents seem to be complaining that the legislation would prohibit pursuant to Rule 404 of the Federal Rules of Evidence, the introduction of substantive evidence of the defendant's expression or associations, unless the evidence specifically relates to the offense or is used to impeach a witness. In this way, the legislation strikes the appropriate balance between two competing interests: the interest of the government in punishing hate crimes and the rights of the defendant.

Hate crimes legislation allows society to prescribe greater punishments for hate crimes because of the distinct emotional harm they cause their victims, the community unrest they incite, and the likelihood that they will provoke retaliatory crimes. See *Wisconsin v. Mitchell*, 508 U.S. 476, 488 (1993) (upholding a hate crimes punishment enhancement statute). However, H.R. 1592 also protects a defendant's rights by only permitting the introduction of evidence within the confines of the Federal Rules of Evidence and the First Amendment.

The First Amendment protects speech and expressive conduct. Our bill only punishes criminal conduct, which is not protected by the First Amendment. Any argument that this legislation punishes expressive conduct would likely be unsuccessful because using violence to convey one's ideas is outside the scope of the First Amendment. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982). In *Wisconsin v. Mitchell* the Court distinguished between statutes that are explicitly directed at expression and statutes that are directed at conduct. 508 U.S. at 487. The Court upheld the statute in *Wisconsin v. Mitchell* because it was directed at criminal conduct, unlike the statute at issue in *R.A.V. v. St. Paul*, which the Court struck down because it was explicitly directed at expression. *Id.* The critical flaw with the statute at issue in *R.A.V.* was that it was viewpoint discriminatory: It prohibited otherwise permissible speech based on the subject and perspective of the speech. *R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992).

H.R. 1592 does not ban religious, political, or offensive speech, or even punish expressive conduct, such as cross burning or flag burning. Rather, the legislation is only directed at criminal conduct that is independently criminal, such as assault or murder. It punishes conduct that is already criminal more severely because of the defendant's motivation in choosing the victim. Thus, evidence of a defendant's expressions and associations properly can be admitted under certain circumstances.

Moreover, Mr. Speaker, nothing in this legislation would prohibit the lawful expression of one's deeply held religious beliefs. If they wish, any person will continue to be free to say things like: "Homosexuality is sinful"; "Homosexuality is an abomination"; or "Homosexuals will not inherit the kingdom of heaven." This is because H.R. 1592 only covers violent actions committed because of a person's sexual orientation that result in death or bodily injury.

Mr. Speaker, the American public opinion strongly favors this legislation. According to a recent survey by Peter Hart and Associates, voters overwhelmingly favor expanding the definition of hate crimes to include crimes against people based on sexual orientation or gender identity. Three in four (73 percent) voters favor Congress's expanding the definition